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NO. 9, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES OF AMERICA, Plaintiff

v.

STATE OF LOUISIANA, ET AL

MOTION BY THE STATE OF LOUISIANA FOR ENTRY OF SUPPLEMENTAL DECREE NO. 2, PROPOSED SUPPLEMENTAL DECREE, AND MEMORANDUM IN SUPPORT OF MOTION

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NO. 9, ORIGINAL

UNITED STATES OF AMERICA, Plaintiff

v.

STATE OF LOUISIANA, ET AL

MOTION BY THE STATE OF LOUISIANA FOR ENTRY OF SUPPLEMENTAL DECREE NO. 2

1. The Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§1301 et seq. (1953), confirmed, granted, and quitclaimed to each Gulf Coast State the submerged lands within three miles of its coast line and to its historic boundary to a limit of three leagues from the coast line.

2. This Court held in a prior stage of this litigation that Louisiana was not entitled to a three-league boundary under the Submerged Lands Act, but reserved the question of the location of the Louisiana coast line for a later stage of the proceedings.

3. The Court expressly retained jurisdiction to entertain such further proceedings, to enter such orders and issue such writs as may from time to time be necessary or advisable to give proper force and effect to its decree.

4. Paragraph 3 of the Court's 1960 decree contemplated the possibility of agreement between the

United States and the States as to "the location of the coast line."

5. No agreement subsequent to the decree has been reached between the State of Louisiana and the United States, although the United States in its Motion for Supplemental Decree No. 1 in this case has conceded the seaward boundary of Louisiana is at least three miles from the points covered by the Court's decree of December 13, 1965. Louisiana did not object to the entry of this decree, but fully reserved its rights to a more extensive boundary.

6. The Decree of December 13, 1965, 382 U.S. 288, 86 S. Ct. 419, also reserved jurisdiction to entertain such further proceedings as are necessary to give force and effect to the Decree of December 12, 1960, 364 U.S. 502, 81 S. Ct. 258, and to the Decree of December 13, 1965.

7. This pleading is filed by the State of Louisiana to request the Court to give force and effect to said decrees by entry of a second Supplemental Decree.

8. By the Act of February 19, 1895, Congress "authorized, empowered and directed" the Secretary of the Treasury to "designate and define" the line dividing the high seas from inland waters. This authority was later transferred to other agencies and finally to the Commandant of the Coast Guard who had such authority during the year 1953.

9. By the Submerged Lands Act, approved May

22, 1953, Congress confirmed, granted and quit-claimed to each State the submerged lands within its boundaries, including the lands within three miles of its coast line, and defined coast line as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

10. Section 4 of the Submerged Lands Act provides:

> "Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries."

11. In 1953, subsequent to the approval of the Submerged Lands Act, the Commandant of the Coast Guard acting pursuant to the Act of February 19, 1895, as amended, completed the designation and definition of the seaward limit of inland waters off the Louisiana coast begun by his predecessors in authority as early as 1895.

12. By Louisiana Act 33 of 1954, La. R.S. 49:1, the State of Louisiana accepted and approved the designation of the seaward limit of inland waters by agencies of the United States Government pursuant to applicable Acts of Congress as its coast line. The inland water line designated and defined by the Coast Guard Commandant and accepted and approved by Louisiana is as follows:

From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Midchannel Lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1.

13. The Inland Water Line, as above designated and defined, does in fact constitute the seaward limit of inland waters and has constituted and is the coast line of Louisiana both as a matter of domestic law and in a general jurisdictional or territorial sense.

14. The waters landward of the Inland Water Line have been claimed by the United States as inland waters of the United States, and foreign nations have acquiesced in this claim.

15. If the line had not been thus designated and defined by agents of the United States and accepted and approved by the State of Louisiana it would be necessary that a line be designated on the basis of hydrological, geological, engineering, historical, economic, geographical, navigational and other facts, many of which would be disputed. These facts would establish the Louisiana coast line seaward of the shore, and in some instances further seaward than the Inland Water Line defined above. In any event, the

coast line and boundary of Louisiana would be recognized as extending further seaward than the lines conceded or asserted by the United States because of the presence of: numerous harbor works and extensions, including jetties, dredged channels, and harbor anchorage areas; straits; sounds; bays; reefs and shoals; islands and low-water elevation complexes and archipelagoes; unique geological and hydrological phenomena; mud lumps and other seaward extensions of mainland forms; various artificial works; historic inland water bodies; and myriad other natural and historical facts, involving a great multitude of issues. These phenomena and issues not only show that Louisiana's coast line should not be the shore of the mainland but a line in the water; their number, nature and complexity also show that the line designated and defined by agencies of the United States acting under applicable Acts of Congress and accepted and approved by Louisiana is the best and most workable coast line which could be defined for Louisiana and is the only line which affords the means for attaining the certainty and definiteness which should accompany any Congressional grant of property rights. And if the line had not been already designated and defined and accepted and approved by Louisiana the Court would undoubtedly require the services of a Special Master to consider the mass of evidence entailed in resolving the respective contentions of the parties.

The State of Louisiana, by its undersigned counsel, now moves the Court—

For entry of a Supplemental Decree declaring that—

1. The coast line of Louisiana is the line designated and defined by agencies of the Federal Government pursuant to the Act of February 19, 1895, 28 Stat. 672, 33 U.S.C. §151, as amended, and accepted and approved by the State of Louisiana by Louisiana Act 33 of 1954, La. R.S. 49:1, as follows:

> From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Midchannel Lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1.

2. The State of Louisiana is entitled, as against the United States, to all the lands, minerals and other natural resources underlying the Gulf of Mexico that are landward of a line three geographical miles seaward of the coast line described above.

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may be necessary to give proper

force and effect to the decrees of December 12, 1960, and December 13, 1965, herein, or to this decree.

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UNITED STATES OF AMERICA, Plaintiff

v.

STATE OF LOUISIANA, ET AL

PROPOSED SUPPLEMENTAL DECREE

For the purpose of giving effect to the decree of this Court rendered December 12, 1960, and to the decree of this Court rendered December 13, 1965, it is hereby ordered, adjudged, and decreed that:

1. The coast line of Louisiana as referred to in paragraphs 1 & 2 of this Court's decree of December 12, 1960, herein, is as follows:

> From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Midchannel Lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1.

2. The State of Louisiana, as against the United States, is entitled to all the lands, minerals, and other natural resources that are landward of a line three geographical miles seaward from the coast line of Louisiana as described in paragraph 1 of this decree, with the exceptions provided by §5 of the Submerged Lands Act, 67 Stat. 32 (1953).

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may be necessary to give proper force and effect to the decrees of December 12, 1960, and December 13, 1965, or to this decree.

In the Supreme Court of the United States

OCTOBER TERM, 1967

NO. 9, ORIGINAL

UNITED STATES OF AMERICA, Plaintiff

v.

STATE OF LOUISIANA, ET AL

MEMORANDUM IN SUPPORT OF MOTION FOR SUPPLEMENTAL DECREE NO. 2

I.

In *United States v. State of Louisiana*, 339 U.S. 699 (1950), this Court held that the State of Louisiana was not entitled to the lands, minerals and other natural resources underlying the Gulf of Mexico lying seaward of the ordinary low-water mark on the Coast of Louisiana and outside of its inland waters (See decree, 340 U.S. 899 [1950]). Thereafter, Congress passed the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§1301-1315 (1953), confirming, granting and quitclaiming to each coastal state the submerged lands of the Continental Shelf to a minimum of three miles from its coast line, and to its historic boundary in the Gulf of Mexico not to exceed three leagues from its coast line. Section 2(c) of the Act defined coast line as the "line of ordinary low water along that portion of the coast which is in direct contact with the open

sea and the line marking the seaward limit of inland waters."

The United States originally brought this suit against the State of Louisiana to have adjudicated Louisiana's claim to a three league maritime boundary. Pursuant to the order of this Court, 354 U.S. 515 (1957), the suit was broadened to include all Gulf Coast States; thereafter the case was argued before the Court. The Court in its opinion, 363 U.S. 1 (1960), and decree, 364 U.S. 502 (1960), held that Louisiana was not entitled to claim a boundary three leagues from its coast line.

The opinion and decree, however, did not relate to the placement of the seaward boundary of the State or of its coast lines. As the Court stated,

> "We decide now only that Louisiana is entitled to submerged-land rights to a distance no greater than three geographical miles from its coast lines, wherever those lines may ultimately be shown to be." 363 U.S. at 79.

The decree also reserved jurisdiction,

> "to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree." 364 U.S. 502, 504.

To this end the United States in November, 1965, filed a motion in the Court for Supplemental Decree No. 1 ceding a portion of the areas off the Louisiana Coast theretofore in dispute. Louisiana did not object to the motion, but reserved all rights to its coast line

and historic boundary (Answer, p. 1; see decree, 382 U.S. 288, para. 10). The subsequent decree of December 13, 1965, 382 U.S. 288, provided that the Court,

> "retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to the decree of December 12, 1960, herein, or to this decree. . . ."

In its motion for the decree, the United States represented to the Court that,

> "Concurrently with, or soon after, the filing of this motion, the United States intends to move the Court for entry of another supplemental decree adjudicating the rights of the parties in the remainder of the litigated area, as to which there is still a substantial controversy." (U.S. Motion, p. 1, note 1)

Since that time, no such motion has been filed. However, on March 24, 1967, the United States filed a Motion in this Court for, among other things, a Supplemental Decree as to the State of Texas denying the right of Texas to claim all the submerged lands within three leagues of certain jetties off the Texas Coast, including the jetties at Sabine Pass off the Louisiana Coast.

In its response and supporting memorandum submitted concurrently with this Motion the State of Louisiana has moved the Court to limit the issue of the controversy between the United States and Texas to that stated in the brief filed by the United States or to

stay proceedings in that matter until Louisiana could be fully heard. As more fully explained in the memorandum accompanying the response of Louisiana, the State of Louisiana believes that no adjudication of the Texas coast line should be made in any manner which would adversely affect Louisiana unless the issues involved in a determination of the Louisiana coast line are fully presented to the Court.

II.

The Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§1301-1315 (1953), confirmed, granted and quitclaimed to each coastal state the submerged lands off its coast to a minimum of three miles from its "coast line". Section 2(c) of the Act defined the term "coast line" as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." Nowhere in the Act was there a definition of the term "inland waters".

However, Congress long prior to the Submerged Lands Act had provided for a definition of inland waters. The Act of February 19, 1895, 28 Stat. 672, provided,

> "The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with lighthouses, light vessels, buoys or coast objects, *the lines dividing the high seas from rivers, harbors and inland waters.*" (Emphasis ours)

The authority delegated to the Secretary of the Treasury was successively delegated to the Secretary of Commerce and Labor by Act of February 14, 1903, c. 552, §10, 32 Stat. 829; to the Secretary of Commerce by Act of March 4, 1913, c. 141, §1, 37 Stat. 736; and to the Commandant of the Coast Guard, 1946 Reorg. Plan No. 3, §§101-104 eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Acting pursuant to this statute the Commandant of the Coast Guard drew a line in 1953 to demark the seaward limits of inland waters off the entire Louisiana Coast, although his predecessors had drawn lines around the complex Mississippi Delta as early as 1895. In 1954 the State of Louisiana by Act 33 of 1954, La. R.S. 49:1, accepted and approved this line as the seaward limit of its inland waters and therefore its coast line for purposes of the Submerged Lands Act.

As this Court has noted, the Submerged Lands Act and the Outer Continental Shelf Lands Act together constitute a division of the resources of the Continental Shelf between the Federal Government and the States, and for this purpose Congress could have divided such resources in any way it wished. See *United States v. State of Louisiana, Etc.*, 363 U.S. 1, 31-36 (1960); *United States v. State of California*, 381 U.S. 139, 157 (1965). Congress chose to refer to the outer limit of inland waters for such division. The Act of Congress which provides a definition of inland waters is the Act of February 19, 1895; it should control for the purely domestic purposes of the Submerged Lands

Act. Whenever the Congressional mandate has been acted upon, such action is binding upon all agencies of the United States, especially when the line dividing the high seas from inland waters has been accepted and approved by a sovereign State as Louisiana has done pursuant to its Act 33 of 1954. Only when this has not been done should the Court seek other criteria.

In this Court's 1960 Louisiana decision the question whether the Inland Water Line constituted Louisiana's coast line for purposes of the Submerged Lands Act was postponed to a later stage of the case, 363 U.S. at 79, *and in the only decision of this Court subsequent to the 1960 case dealing with coast lines* neither party claimed any reliance on the Inland Water Line for any purpose, see *United States v. California*, 381 U.S. 139, Transcript of Oral Argument, pp. 149, 152. Furthermore, we do not find that the Court was asked to consider *The Delaware*, 161 U.S. 459 (1896). In that case the Supreme Court found that pursuant to the Act of February 19, 1895, the Secretary of the Treasury "designated and defined the dividing line between the high seas and the rivers, harbors and inland waters of New York" (161 U.S. at 464), and that the waters landward of that line were "as much a part of the inland waters of the United States within the meaning of this act as the harbor within the entrance" to the New York Harbor (161 U.S. at 463).

But the Inland Water Line is not the coast line of Louisiana merely because it deals with the same subject of inland waters as the Submerged Lands Act. If it may be said that the definition of a State's coast line

must in any event have an international content, Louisiana will show that the line at all relevant times has been the outer limits of the United States inland waters in a general jurisdictional or territorial boundary sense.

One of the purposes of the Inland Water Line, as our opponent has repeatedly stated, is to designate the dividing line between operation of the International Regulations for the Prevention of Collisions at Sea, 33 U.S.C. §§1051 et seq., and operation of the United States Inland Rules of the Road, 33 U.S.C. §§154 et seq. These rules have had a long history, beginning in 1842. This history shows very clearly that the designation of the Inland Water Line carried with it an assertion that the waters enclosed by it were the jurisdictional inland waters of the United States.

This is most emphatically true of the first line designated off the Louisiana Coast shortly after enactment of the Act of February 19, 1895 (see Treasury Dept. Circular No. 127, July 13, 1895). Short years before this designation around the complex, shallow, and sheltered waters of the Mississippi Delta, the Congress and representatives of many of the major powers of the world had indicated that the application of rules of navigation at variance with internationally accepted rules was an assertion that the waters governed by the rules were the jurisdictional waters of the Nation adopting them.

On several occasions before the adoption of the 1895 Act it was pointed out to the Congress that local

rules of navigation could not apply beyond the jurisdictional waters of the United States (See, e.g., Sen. Ex. Doc. No. 160, 47th Cong., 1st Sess., p. 47 (1882)). Similar statements were made in proceedings of an international conference on the subject of collision rules held in Washington in 1889 and sponsored by the United States Department of State (See Proceedings, International Marine Conference, Sen. Ex. Doc. No. 53, 51st Cong., 1st Sess. (1890), passim). In adopting local rules at variance with the international rules, Congress specifically adopted the suggestion of the Navy Department that the rules be applied not to all municipal waters of the United States but only to the inland waters of the Nation (See, e.g., H.R. Rep. No. 731, 48th Cong., 1st Sess. (1884), pp. 2, 4). And it was later made absolutely clear what the term "inland waters" meant when, in the debates concerning adoption of the code of rules for inland waters, it was stated,

> "[B]y inland waters I do not mean lakes and rivers, for they have a code by themselves, and are not affected by it, but Chesapeake Bay, for instance, and Delaware Bay, and New York Harbor."

30 CONGRESSIONAL RECORD 932 (1897). All of the waters mentioned were clearly jurisdictional inland waters. See 1 Opinions of the Attorney General of the United States 15 (1793); *Stetson v. United States* (1885), 4 Moore, International Arbitration 4332; *The Delaware*, 161 U.S. 459 (1896).

Given this background of the adoption of the

International and Inland Rules, it could not have been more clear to foreign nations that the designation of lines around the Delta was an act of the United States declaring the waters landward of the line to be waters of the United States, subject to its complete power and control. That no nation objected to the drawing of the lines around the important Mississippi Delta is a recognition by them that this area was within the ambit of authority of the United States.

Even the Coast Guard at a time before this litigation arose has viewed the Inland Water Line as enclosing the jurisdictional waters of the United States. In 1925 orders were issued to the Coast Guard fleet on the subject, "Marginal Waters of the United States." The orders were for the purposes of Coast Guard enforcement of the law of the United States in cooperation with Customs and Department of Justice officers and to provoke challenges or court contests if the jurisdiction asserted was ever challenged. It was clearly not limited to navigational regulation. The Department of State was informed of the order and acquiesced therein, as evidenced by a letter from an Assistant Secretary of the Treasury, Seymour Lowman, to the Secretary of State, dated 4 June 1929. This letter quoted the May 20, 1925, order, and bore Treasury Department file number CG-64-092. The letter and order plainly establish that "all waters inshore of the lines designated and defined by the Secretary of Commerce in accordance with the Act of Congress of February 19, 1895, as limiting the in-

land waters of the United States" were claimed by the United States as being within its territorial jurisdiction. There has never been any order which we have been able to discover which rescinded the 1925 order.

The Commandant of the Coast Guard in 1953 completed the work begun in 1895. Louisiana merely accepted and approved the designation. Plainly, this fixed the base line for determining the boundary of Louisiana against changes without its consent. Once the acceptance was formally made, no one, not Congress, not the Executive, not the Judiciary, could change the boundary without Louisiana's approval. See, e.g., *United States v. State of California*, 381 U.S. 139, 168 (1965); *New Mexico v. Colorado*, 267 U.S. 30 (1925); *Louisiana v. Mississippi*, 202 U.S. 1, 40-41 (1906).

There is yet another reason that the Inland Water Line should be declared to be the coast line of the State of Louisiana for purposes of the Submerged Lands Act. Congress, in passing the Submerged Lands Act, intended to solve once and for all the matter of the ownership between Nation and State of the natural resources underlying the United States' Continental Shelf. It specifically sought to avoid any definition of "coast line" which would not serve this purpose and which would give rise to protracted litigation (See, e.g., Hearings in Executive Session of the Senate Committee on Interior and Insular Affairs on S.J. Res. 13, 83d Cong., 1st Sess., pp. 1354-1355 (1953)). This Court recognized and applied this policy

when it determined the coast line of California, and the specifications of the rules as there applied were well suited to fulfill the Congressional intent in the context of the California facts, where neither party urged the position asserted by Louisiana, because it was to their mutual disadvantage.

But, as many members of Congress noted, the treatment of California and Louisiana in the same manner would ignore geographical factors wholly different (H.R. Rep. No. 2515, 82d Cong., 2nd Sess., p. 19 (1953)). Louisiana's coast is complex; it changes dramatically over short periods of time through the vagaries of nature or the unforseen consequences of acts of man. In this great area, islands appear and may or may not disappear; islands change location, not merely in distances of feet, but sometimes six or more miles; today a headland is present, and tomorrow it may be gone; a semicircle test might be met for a great bay and in years hence the bay may or may not be only a minor concavity due to massive sedimentation or erosion; land moves not only horizontally but vertically, and slight changes in elevation mean great distances in placement of a low-water line; the nature of the shores makes them peculiarly amenable to the frequent attacks of hurricanes; artificial works and frequent activity of man can make great changes, directly and through effects on hydrology and ecology; the Nation's greatest river empties into the sea and clearly defined control of the approaches is essential to the national security and

economy; water depths generally preclude any real or substantial legitimate international interests. This Court has sought to adopt the best and most workable definition of inland waters suited to fulfill requirements of definiteness and certainty which should attend any Congressional grant of property rights. This desire has led the Court to reject any boundary subject to "wholesale" changes (See 381 U.S. at 177). Any boundary determined by the configurations of the Louisiana coast would shift before a complete and detailed description of it is written. And any boundary which may change so dramatically will be subject to continuous dispute to the detriment of both State and Nation, and would effectively destroy incentives for investing in and developing vital resources in great belts of water, many miles wide, for hundreds of miles.

If the coast line had not been designated and defined by the Federal Government, or had not been accepted and approved by the State of Louisiana, it would be necessary to devote substantial time and the taking of factual evidence to determine the exact location of the Louisiana coast line and to finally settle this seemingly interminable dispute. And, in addition to the facts of history, geography, and economy, it may be necessary to consider questions of law and fact involving harbor works, bays, historic waters and bays, straits, coastal islands and the concession of the United States that the waters behind all islands are inland waters, and many questions necessary to the determination of inland waters.

The United States, in pleadings or memoranda filed in this Court in this cause, has recognized that "there is still a substantial controversy" over the "remainder of the of the litigated area" (See Footnote 1 of the Motion by the United States for entry of a Supplemental Decree (No. 1)), and that "there can be no doubt that any adjudication of the location of the base line will require the taking of factual evidence" (Memorandum filed by United States on March 5, 1956, p. 9).

In its Answer to the United States Motion for Supplemental Decree (No. 1) and its supporting memorandum, Louisiana noted that the dispute as to the coast line will undoubtedly require the services of a Special Master to consider the massive evidence entailed in resolving the respective contentions of the parties (See footnote to the Answer filed by the State of Louisiana and pages 9 and 10 of the Answer and Memorandum filed by the State of Louisiana in response to the Motion for Supplemental Decree (No. 1)), and this would be correct if the coast line had not already been established as set forth above. That the line has been defined and accepted, however, renders the appointment of a Master unnecessary.

Respectfully submitted,

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PROOF OF SERVICE

I, the Attorney General of the State of Louisiana, certify that copies of the foregoing motion, proposed decree and memorandum have been properly served on the —— day of September, 1967, by mailing copies, sufficient postage prepaid, to the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington 25, D. C.